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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

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No. 616

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ANDREW J. EASTER,
*Petitioner*,

v.

N. JEROME ZIFF, AND HAROLD ROSEN,
*Respondents.*

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## PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

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Andrew J. Easter, petitioner herein, requests the Court to review the Petition for a Writ of Certiorari to the Court of Appeals of Maryland and the Original Records of the lower courts, filed herein; the docket entries of the writ, pages 11 to 14, and the appendix, are informative as to the proceedings and the court's arbitrary determinations in denying the petitioner a Contributory Judgment; all of which will substantiate the following facts and reasons:

### 1. First Reason for Granting Rehearing

Although the respondents were partners in various ventures other than officials of Honey Lane Incorporated, a

restaurant built on property owned by the petitioner, they were also lessees of a restricted and optional thirty year lease and as individuals were responsible as mortgagees with the petitioner in securing a loan of $20,000. to complete financing the construction of the restaurant, the petitioner, as owner and landlord, was thereby the guarantor of said mortgage loan. A substitute judge from southern Maryland while sitting in the Baltimore trial court, *erred* by not awarding the plaintiff a contribution from the defendant co-obligors, by deliberately *rewording* and misrepresenting the plaintiff's and the defendant's Prayers, when instructing the jury to return a verdict for the defendants that the defendants were acting in the role of Guarantors, and Limitations as to time, by a proffer of $2,500., based on three years instead of twelve years as the Lease and Loan Agreements were signed under seal.

**2. Second Reason for Granting Rehearing**

The substitute judge was also dilatory in not acting in time on plaintiff's succeeding petitions to correct the judge's *error* above, as final action was required before an appeal could be noted.

Although an associate judge of the Court of Appeals of Maryland had extended time for the clerk of the trial court to certify and transmit the original records to the court of appeals by April 1, 1965, same was received and acknowledged by the Clerk of said court on March 31, 1965, and who also stated that, Brief for Appellant due to be filed May 10th, 1965. The Court of Appeals on April 19, 1965, had granted both motions of the appellees to dismiss the appellant's appeal; and on April 28, 1965, denied the appellant's Motion for Consideration of Appellees' Motion to Dismiss Appeal, filed on April 23, 1965.

### 3. Third Reason for Granting Rehearing

In spite of the success of said restaurant, the respondents, as tenants, in violation of the Lease Agreement prohibiting conditional sales contracts, etc., voluntarily filed receivership about three months after opening and was declared to be insolvent and liquidated as incorporated, Honey Lane, Inc.; but failed to pay off as individuals and as joint obligors to pay the $20,000. loan; the petitioner had to take charge of said property or lose same that would result from a foreclosure; the respondents were and are still liable for said payment as Joint obligors, for reasons as stated and the following:

> The Annotated Code of Maryland, 1957:—Art. 50. Sec. 1-8,—Joint obligors, Effect of judgment on joint debt against one as to liability of rest,—Art. 57. Sec. 1, 10,—Where one joint maker of note is required to pay the whole amount, he is entitled to recover contributions from his co-makers on account money paid. *Bardy* v. *Bradt*, 110 Md. 656, 72A. 567; *Hooper* v. *Hooper*, 81 Md. 155, 31A. 508.—As to payments by co-maker of joint and several note, payment by one is payment for all, one acting virtually as agent for all. *Webner* v. *Gacther*, 68 Md. 342, 12A. 8, 253.—Where he himself has exercised usual or ordinary diligence for the discovery and protection of his right. *Piper* v. *Jenkins*, 207 Md. 308, 113A. (2d) 919;—Art. 73A. Sec. 9-23.—Joint obligors—Partners after disolution—Duties and rights of partners, relations.—Sec. 28.—Interest, charging partners with interest on unsatisfied judgment.
>
> Where one joint maker of note pays it, statute begins to run against his right to contribution, from date of such payment (Release from Baltimore Central Bank, August 5, 1958) *Brady* v. *Brady* 110 Md. 155, 31A. 508,—Right of partner to contribution from co-partners after dissolution,—And a person, interest in the land subject to the mortgage, though

not personally bound to pay it, upon doing so for his own protection has the same right. *Ellsworth* v. *Lockwood*, 42 N.Y. 89, *Averall* v. *Taylor* 8 N.Y. 44. —Art. 73A. Sec. 34.

## CONCLUSION

The Court of Appeals was either unaware of the filing of the various actions for and the *granting of time extensions*, etc., or arbitrarily granted the respondents' Motion to Dismiss Appeal and the Motion filed on April 23, 1965, by the petitioner for Reconsideration of the Court of Appeals Dismissing the Appeal; which was final action of the lower courts to deny the petitioner a Contributory Judgment that the petitioner is entitled as per the Construction Loan Agreement and the facts, etc., and the above Annotated Code of Maryland.

ANDREW J. EASTER,
*In Proper Person*,

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Washington, D.C., 20009
(Adams 2-3874)

*Petitioner.*

Background:

Trained in the Fine Arts—to observe and to recognize the Fact. The original of the reproduction above is one of the appellant's best works.

## CERTIFICATION

It is hereby certified by the undersigned that this petition is presented in good faith and not for delay and that the petition is restricted to grounds which are confined to facts.

ANDREW J. EASTER

## AFFADAVIT OF SERVICE
(Jurat dated January 26 , 1966)

ANDREW J. EASTER